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February 19, 1992

Ms. Donna R. Searcy
Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

Dear Ms. Searcy:

Transmitted herewith, on behalf of EZ Communications, Inc., are an original and four (4) copies of its Motion to Strike Allegheny Communications Group, Inc.'s "Motion for Leave to Respond to Reply to Opposition to Petition to Deny."

In the event there are any questions concerning this matter.

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FEB 19 1992

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

Federal Communications Commission
Office of the Secretary

In Re Application of

ALLEGHENY COMMUNICATIONS
GROUP, INC.

For Construction Permit for
a New FM Radio Station on
Channel 229B, Pittsburgh,
Pennsylvania

File No. BPH-910628MC

To: The Commission

MOTION TO STRIKE ALLEGHENY COMMUNICATIONS GROUP, INC.'S
"MOTION FOR LEAVE TO RESPOND TO REPLY TO
OPPOSITION TO PETITION TO DENY"

EZ Communications, Inc. (EZ), by its attorneys, herewith moves to strike the "Motion for Leave to Respond to Reply to Opposition to Petition to Deny" (ACNI Motion) filed on February 7, 1992, by Allegheny Communications Group, Inc. (ACNI).

As ACNI obviously knows, its pleading is unauthorized and it should therefore not be considered by the Commission. While it is true that some material was contained in EZ's reply that was not in its initial petition to deny, that was because ACNI based some of the arguments in its opposition on matters not previously reviewed by EZ, including a post-filing technical amendment that was not served on EZ.

In addition, ACNI's new motion should be dismissed simply because it is so lacking in merit. As shown by the attached engineering statement of Herman Hurst of Carl T. Jones Corporation, ACNI's desperate, last-minute, claims are simply false.

In view of the foregoing, ACNI's motion of February 7, 1992
should be dismissed.

Respectfully submitted,

EZ COMMUNICATIONS, INC.

By Rainer K. Kraus
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Its Attorneys

February 19, 1992

CARL T. JONES
CORPORATION

STATEMENT OF HERMAN E. HURST, JR.
IN SUPPORT OF A MOTION TO STRIKE
A MOTION PERTAINING TO A
PETITION TO DISMISS OR DENY
AN APPLICATION FOR A NEW FM BROADCAST STATION
AT PITTSBURGH, PENNSYLVANIA
FCC FILE NO. BPH-910628MC

Prepared For: EZ Communications, Inc.

I am a Radio Engineer, an employee of the firm of Carl T. Jones Corporation, with offices located in Springfield, Virginia.

My education and experience are a matter of record with the Federal Communications Commission.

This office has been authorized by EZ Communications, Inc. ("EZ"), licensee of WBZZ(FM), Pittsburgh, Pennsylvania, to prepare this statement and associated exhibits in support of its Motion to Strike in response to a Motion for Leave to Respond to Reply to Opposition to Petition to Deny ("Motion") filed by Allegheny Communications Group, Inc. ("ACGI"). EZ originally filed the Petition to Dismiss or Deny an application (FCC File No. BPH-910628MC) for a new FM broadcast station at Pittsburgh, Pennsylvania, filed by ACGI which is mutually exclusive with the WBZZ(FM) Renewal of License Application.

The ACGI Motion challenges EZ's Reply to the ACGI Opposition to Petition to Deny ("EZ Reply") in three areas. First, ACGI challenges the presence of a fully-compliant Section 73.215 permissible site area for the proposed ACGI new FM broadcast facility.

Second, ACGI argues that it has properly protected a short-spaced first-adjacent channel Class A allocation proposed in Barnesboro, Pennsylvania, under the provisions of Section 73.215. Finally, ACGI once again claims, though has not verified, compliance with the FCC's radiofrequency radiation safety requirements.

SECTION 73.215 PERMISSIBLE SITE AREA

From within the Section 73.215 permissible site area, depicted on Exhibit 1 in the EZ Reply, the ACGI proposal would be fully-compliant with all FCC Rules and Regulations pertaining to contour protection. ACGI does not argue EZ's finding that the permissible site area exists where contour protection (as prescribed in Section 73.215) could be achieved for the proposed new facility in Pittsburgh, Pennsylvania.

As stated in the EZ Reply, the ACGI facility (from within the Section 73.215 permissible site area) would be short-spaced to WQIO(FM), Mt. Vernon, Ohio, by a distance greater than 8.0 kilometers. As a result, EZ demonstrated that, with a waiver of the temporary 8.0 kilometer limitation, the ACGI application would be compliant with

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all rules. ACGI alleges, "there is no reason to believe, based on the Commission's position as stated in its Report and Order in Docket 87-121, that such a waiver would be granted."¹

The Commission's intent in adopting Section 73.215 was to allow applicants to request a short-spaced transmitter site, "provided the service of those licensees [with whom the applicant is short-spaced] is protected from interference in accordance with well established criteria."² As demonstrated in the EZ Reply, and not contested in the ACGI Motion, the ACGI proposal is fully able to satisfy the established interference criteria with respect to WQIO. The Commission imposed the initial, temporary, 8.0 kilometer limitation only because of the Commission's limited processing resources.³

Clearly, in choosing between the magnitude of interference which would result from the ACGI proposal versus the burden of one more application on the processing resources, it would be in the public interest to choose the later. In fact, the 8.0 kilometer

¹ See ACGI Motion, Engineering Statement, Page 2.

² See Report and Order, MM Docket 87-121, Amendment of Part 73 of the Commission's Rules to Permit Short-Spaced FM Station Assignments by Using Directional Antennas, Paragraph 1, Adopted December 12, 1988; Released February 22, 1989.

³ Id.

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limitation has already been lifted concerning an entire Class of FM Stations (Class A).⁴

The temporary limitation has also been "waived" for other FM station classes under

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Barnesboro allocation to "the maximum ERP that could be authorized for the station class of the allotment."⁶

The station class of the Barnesboro allotment is proposed as a Class A. The maximum ERP that could be authorized for the station Class of the allotment, as specified in Section 73.211, is 6.0 kilowatts. ACGI protected the Barnesboro allocation assuming an effective radiated power of only 3.0 kW. In its Motion, ACGI claimed that because the Barnesboro allotment was proposed prior to October 2, 1989, it need only be protected assuming operation with an ERP of 3.0 kilowatts.

This assertion is completely false. Section 73.215 very clearly states that each vacant allotment must be protected to the maximum ERP that could be authorized for the station class. The Rule does not impose any tangential conditions (such as the current spacing situation of the allotment) on this requirement. Initially, Section 73.215(b)(2)(ii) was adopted⁷ with a NOTE stating:

⁶ See 47 C.F.R. § 73.215 (b)(2)(i).

⁷See Report and Order, MM Docket No. 87-121, Amendment of Part 73 of the Commission's Rules to Permit Short-Spaced FM Station Assignments by Using Directional Antennas. Appendix A, Adopted December 12, 1988; Released February 22, 1989.

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"Until further Notice, contours for existing Class A assignments, Class A applications not requesting authorization pursuant to this section, and Class A allotments are based on the presumed use of an ERP of 6000 Watts, and antenna HAATs in the directions of concern that would result from a non-directional antenna mounted at a standard eight-radial antenna HAAT equal to 100 meters. This temporary provision will be removed after the final resolution of proposals in MM Docket No. 88-375."

This NOTE was removed with the Commission's action increasing maximum radiated power for Class A allotments to 6.0 kilowatts effective October 2, 1989,⁸ since 73.215(b)(2)(ii) embodies 6.0 kW in the language "maximum ERP for the applicable station class." Using ACGI's logic would mean that all Class A's authorized prior to the Commission's action increasing power to 6 kilowatts need only be protected on a 3 kilowatt basis.

ACGI simply failed to protect the Barnesboro allotment in accordance with Section 73.215. And, as illustrated in the EZ Reply, when the Barnesboro allocation is properly considered, prohibited contour overlap exists in violation of Section 73.215.

⁸See MM Docket No. 88-375, Second Report and Order, Appendix A, Paragraph 6.

FCC'S RADIOFREQUENCY RADIATION SAFETY REQUIREMENTS

ACGI has repeatedly claimed compliance with the FCC's radiofrequency radiation requirements. However, a detailed radiofrequency radiation analysis of the proposed ACGI transmitter site was not submitted until it appeared in the ACGI Motion. Considering the RF analysis contained in the ACGI Motion, ACGI's claim of compliance with both public exposure limits and occupational safety remains unverifiable.

First, ACGI failed to consider the 2 meter human height allowance in their most recent attempt to verify compliance. It is FCC policy to consider such a safety factor when computing on-site RF exposure limits to the public. As stated on Page 4 of the engineering statement attached to the Motion, ACGI states, "The cumulative percentage of the ANSI standard on the ground is 94.75% with ACGI making up 78.11% of the total." When the human height allowance above ground is considered for only the ACGI facility, the ACGI contribution increases to 83.50% and the cumulative percentage of the ANSI standard is increased to 100.14%.

As stated in the ACGI Motion on page 3 of the engineering statement:

"EZ states that ACGI failed to consider the effect of relay FM and TV facilities. This statement is without substantiation. These facilities have no significant effect and need not be listed."

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EZ's statement in its Reply concerning the effect of other co-located facilities was clearly substantiated and is further supported by ACGI's continued omission of these facilities in its RF analysis. As shown above, based on ACGI's own analysis, the addition of the proposed ACGI antenna would increase the site's total cumulative percentage of the ANSI guideline value above 100%. Any contribution would increase this value further above the maximum allowable limit and must be considered.

Second, in order to claim compliance with worker exposure on the roof of the building which supports the proposed antenna support structure, ACGI utilized a relative field of 0.44 for the ACGI facility. This relative field was obtained from the "ERI elevation pattern on file for ACGI."⁹ The FM Branch of the FCC has determined that this method is inaccurate since vertical radiation patterns supplied by manufacturers are often only array patterns and do not incorporate element pattern data. For transmitting antenna installations as proposed by ACGI, the Commission requires that calculations be based on the findings in EPA's study, EPA-520/6-85-017, Element Pattern Measurement on FM Antennas.

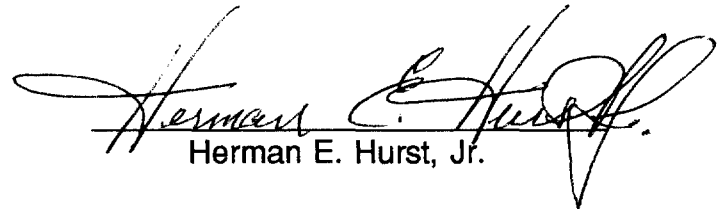
⁹ See ACGI Motion, Engineering Statement, Page 5.

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The additional information contained in the ACGI Motion does not change the fact that ACGI's claims of compliance with both public exposure limits and occupational safety are unverifiable.

This statement was prepared by me or under my direct supervision, and is believed to be true and correct.

DATED: February 14, 1992



Herman E. Hurst, Jr.

CERTIFICATE OF SERVICE

I, Judy Cooper, a legal secretary in the law firm of Koteen & Naftalin, hereby certify that on the 19th day of February, 1992, copies of the foregoing "Motion to Strike Allegheny Communications Group, Inc. Motion for Leave to Respond to Reply to Opposition to Petition to Deny" were deposited in the U.S. mail, postage prepaid, addressed to:

Irene J. Bleiweiss, Esquire*
Federal Communications Commission
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Washington, D. C. 20554

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Judy Cooper

*By Hand Delivery